

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2887 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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UMANAGAR (NANDASAN) SEVA                    SAHAKARI MANDALI LIMITED

Versus

ELECTION OFFICER

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Appearance:

MR KS JHAVERI for Petitioner  
Ms. Ami Yagnik, A.G.P. for the Respondent No. 1, 2

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 02/05/97

ORAL JUDGEMENT

Rule. Ms. Ami Yagnik, 1d. A.G.P. waives  
service of rule on behalf of the respondents. In the  
facts of the case the matter is finally heard today.

2. The petitioner is a co-operative society  
registered under the provisions of Gujarat Co-operative  
Societies Act. It has questioned the decision of the

second respondent excluding two names of members of the Managing Committee of the petitioner-Society in the third and final voters' list. It is not in dispute that the names of these two members, namely, Patel Sureshbhai Khemdas and Patel Dashrathbhai Hirabhai did appear at Sl. No. 55 and 56 respectively in the preliminary voters list and also in the second voters list in accordance with the provisions of rules 7 and 8(1) of the Gujarat Agricultural Produce Markets Rules, 1965. The petitioner-Society being aggrieved by the said exclusion has preferred the present petition with a prayer to quash and set aside the exclusion of the said two names of the members of the Managing Committee of the petitioner-Society from Sl. No. 55 and 56 in the agriculturist constituency in the final voters list published on 9th April 1997 as per Annexure-C to the petition.

3. The authorised officer, the second respondent herein, excluded the aforesaid two names on the ground that the rules were amended with a view to include these two names in view of the ensuing election of the market committee. It is not in dispute that those names were included prior to the election process had commenced. It is not the case either that there was any objection having been raised by anyone with regard to inclusion of these two names in the final voters list. There is, therefore, no question as to application of sub-rule (1-A) of rule 8 of the said Rules. When the names of these two members of the Managing Committee were already included in the preliminary list and the second list of the voters list, it could not have been excluded assuming that it was so sought to be inserted having regard to the ensuing election.

4. In exercise of the powers conferred by sec. 59 of the Gujarat Agricultural Produce Markets Act, 1963, the State Government has framed the rules, namely, Gujarat Agricultural Produce Markets Rules, 1965. Rule 4 thereof provides that whenever a general election of a market committee is to be held, the Director shall, by an order in writing, fix a date of such election and publish such order. Rule 5 of the Rules provides for three separate list of voters. Rule 6 of the said Rules contemplates that a person so named is entered in the list of voters shall be qualified to vote on election to which list of voters relates. Rules 7 and 8 are relevant for the purpose of inclusion and exclusion of the names of the voters from the voters list and as such is material so far as the present petition is concerned. No case is made out by the respondents so far as exclusion

of the above two names are concerned from the final list of voters in regard to rule 7 and 8 of the said Rules. There cannot be anything illegal or wrong if the rules are amended with a view to include the names of the members of the managing committee of the petitioner-Society. Admittedly the rules were amended prior to the election process began.

5. Ms. Yagnik, ld. A.G.P. appearing for the respondents contended that the petitioner could have preferred appeal by approaching the Director of Markets Committee. However, she has not been able to point out the provisions relating to such appeal or revision. Apart from that, as stated by Mr. Jhaveri, ld. Counsel appearing for the petitioner, the nomination papers are to be filed by 12th May 1997 and in this peculiar circumstances if the petitioners are directed to approach the Director of the Market Committee, it would amount to frustration of their cause.

6. In the above facts and circumstances of the case, the impugned decision dated 9th April 1997 of the second respondent in regard to exclusion of two names of the members of the Managing Committee of the petitioner-Society from the final list is illegal and without authority of law. The said order of exclusion is, therefore, liable to be quashed and is hereby quashed.

7. In the result, the petition succeeds. Rule is made absolute quashing and setting aside the impugned order dated 9th April 1997 at Annexure-D to the petition by the second respondent, the authorised officer. It is further directed that the authroised officer, the second respondent, shall include the name of S/s Patel Sureshbhai Khemdas and Patel Dashrathbhai Hirabhai at the appropriate place in the final list of voters as they are the members of the Managing Committee of the petitioner-Society and the bye-laws and the aforesaid Rules in that regard are already and duly amended and approved. There shall be no order as to costs. Direct service permitted.

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